

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5169 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?  
NO

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JIVRAJBHAI RAVJIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR CC BHALJA for Petitioner

MS PS PARMAR ADDL GOVT. PLEADER for Respondent No. 1

MR DS NANAVATI for Respondent No. 2

MR RM PARMAR for Respondent No. 3

M/S MG DOSHIT & CO for Respondent No. 4

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 09/10/96

ORAL JUDGEMENT

The petitioner prays for issuance of a writ of  
mandamus or any other appropriate writ directing the  
respondent no.1 to condone the breach of Condition No.4  
imposed while granting the permission under Sec.20(1) of

the Urban Land Ceiling Act (for short "The Act"), as on 9th April 1996, the Government rejected his application thereof.

2. The petitioner wanted to construct the dwelling Units for the weaker section of the society. He contacted the respondent no.3 who was at that time owing certain lands. Before any agreement after the talks thereof could be entered into, necessary permission for transfer of the land under the Act was required to be obtained. The petitioner and the respondent no.3 therefore jointly prayed for necessary permission. The respondent no.1, on 15th June 1992 granted the permission to sell the land, which was in excess of the ceiling limit, imposing certain conditions. One of such conditions was to execute the sale deed within the period of 9 months. Thereafter the agreement to sell was entered into, but unfortunately, within the time specified, the petitioner could not get the sale deed executed as the members of the Cooperatrive Housing Society formed, being poor could not in time collect the amounts or raise the fund and fill up necessary forms satisfying consideration. As Condition No.4 was thus violated, the Government under Sec.20(2) of the Act, on 7th January, 1995, withdrew the permission without hearing the petitioner. Being aggrieved, the petitioner moved this court preferring Special Civil Application No.3013 of 1995 for necessary relief. This court was pleased to allow the petition on 19th June 1996. The matter was remanded for afresh consideration. The Government then heard the parties again, but was pleased not to grant the permission. It was because of the decision of the Apex Court rendered in the case of V.S.Vasudev Versus State of Karnataka, JT 1993(2) SC 465 = 1993(3) SCC 467, wherein it was laid down that if such permission was granted, the object of the Act would be frustrated. Accordingly the decision was taken on 19th July 1996. The petitioner found that the Government was not right in passing such order, and therefore, for necessary relief, the present petition is filed.

3. It has been contended on behalf of the petitioner that the Government did not interpret the law in its true spirit. By withdrawing the permission, the object of the Act was not going to be fulfilled. On the contrary it was going to be defeated.

4. The Government- respondent no.1 having no objection otherwise disposed of the application only because the decision rendered by the Supreme Court in the case of S.V.Vasudev (Supra) was coming in its' way. The

view taken in S.V.Vasudev's case, now does not hold the field. Subsequently in the case of T.R.Thandur Versus Union of India and others, 1996(1) G.L.H. 771, the Apex Court, has held that one of the objects of the Act is to promote group housing with a view to provide housing accommodation to more people by promoting group housing schemes, in stead of the same area of land being utilised to house lesser number of the people. A restriction on transfer of the exempted land, operating in this manner, depriving the benefit in a group housing scheme, to flat owners, does not promote the object of the legislation. Thus the concerned authority is advised to take pragmatic view which would promote the object of the Act and larger good. The authority has to exercise the discretion considering pros and cons and take appropriate decision. It cannot, without applying mind, mechanically reject the petition being obsessed with the notion that the land held excess of the ceiling limits cannot be permitted to be used by the owner having the scheme to promote the object of the Act. If the authority smacks foul game or mischief, it is open to him to reject the proposal advanced by the owner of the land. In order to promote the object of the Act, a liberal view should be taken and recording necessary reasons, a decision appropriate in the case should be taken. In view of the latest decision of the Supreme Court in the case of T.R.Thundur (supra), the application of the petitioner requires to be considered a fresh, and for that purpose, the matter is required to be remanded, allowing the petition and quashing the impugned order.

5. For the aforesaid reasons, the petition is allowed. The order refusing to grant the permission produced vide Annexure A dt. 9th April, 1996 is hereby quashed and set aside. The matter is remanded to the State Government- respondent no.1 for considering the application of the petitioner afresh and take appropriate decision in the matter. No costs in the facts and circumstances of the case. The respondent no.1 hearing the petitioner shall take appropriate decision on or before 30th January, 1997. Till then, the parties shall maintain Status Quo. Rule is accordingly made absolute.

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